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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,378	08/01/2003	Kenneth L. Byard	9157B	4159

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EXAMINER

WEEKS, GLORIA R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,378

Applicant(s)

BYARD, KENNETH L.

Examiner

Gloria R Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 11-15, 17-20, 23-32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-34 is/are allowed.
- 6) ☒ Claim(s) 1-4, 11-15, 17-20, 23-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Amendment

1. This action is in response to Applicants' amendment received on October 18, 2004.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 11-15, 17-20, 24 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byard (USPN 2,618,779) in view of Landrus (USPN 4,380,312) and Dvorak et al. (USPN 5,699,864).

In reference claims 1-4, 11-15, 17-20, 24 and 29, Byard discloses a hammer-operated stapling apparatus for driving staples, comprising: a magazine (10); a staple rail (32) removably (column 3, lines 1-5) provided in the magazine (10) for supporting a supply of staples (24) of selected size; a follower (36) slidably provided in the magazine (10); a spring (39) engaging the follower (36); a head apparatus provided on one end of the magazine (10) having a back head (16) and a front head (17); a spring (31) biased plunger (21) reciprocally mounted in the head apparatus; a magazine cover (11) pivotally carried by the magazine (10); and a spacer (38) removably mounted (14, 15) on the magazine cover (11) and spaced from the staple. Byard does not disclose a handle attached to a head apparatus having a front and back head separated by spacers, as well as a handle guard.

Landrus teaches a stapling apparatus for driving staples, comprising: a magazine (48); a head apparatus (10) having a front head (38), a back head (36), and a pair of spacers (legs of 32)

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interposed between the front and back head (38, 36); a staple rail (49) provided in the magazine (48); a spring (96) biased plunger (34) reciprocally mounted in the head apparatus (10); a handle (figure 1) attached to the head apparatus (10) for positioning the head apparatus (10) while driving staples from the head apparatus (10). It would have been obvious to one having ordinary skill in the art to modify the stapling apparatus of Byard to include the handle of Landrus for the purpose of positioning the stapling apparatus in desired locations. The head apparatus of Landrus includes an independent plunger guide (32) protected by a front and back plate (38, 36). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the head apparatus of Byard to include the head assembly of Landrus for the purpose of limiting the drive distance of a plunger to a position dependent upon the thickness of the article receiving the staple (Landrus-abstract).

Dvorak et al. teaches an impact device having a handle (86) with a handle guard (94). It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the apparatus of Byard to include the handle guard of Dvorak et al. for the purpose of guarding the hand during use of the apparatus (Dvorak et al.-column 6, lines 11-15).

4. Claims 23 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byard (USPN 2,618,779) in view of Landrus (USPN 4,380,312).

Regarding claims 23 and 25-28, Byard discloses a hammer-operated stapling apparatus for driving staples, comprising: a magazine (10); a head apparatus (16, 17); a staple rail (32) removably (column 3, lines 1-5) provided in the magazine (10) for supporting a supply of staples (24) of selected size; a spring (31) biased plunger (21) reciprocally mounted in the head apparatus; and a magazine cover (11) pivotally carried by the magazine (10). Byard does not disclose a handle attached to a head apparatus having a front and back head separated by spacers.

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Landrus teaches a stapling apparatus for driving staples, comprising: a magazine (48); a head apparatus (10) having a front head (38), a back head (36), and a pair of spacers (legs of 32) interposed between the front and back head (38, 36); a staple rail (49) provided in the magazine (48); a spring (96) biased plunger (34) reciprocally mounted in the head apparatus (10); a handle (figure 1) attached to the head apparatus (10) for positioning the head apparatus (10) while driving staples from the head apparatus (10). It would have been obvious to one having ordinary skill in the art to modify the stapling apparatus of Byard to include the handle of Landrus for the purpose of positioning the stapling apparatus in desired locations. The head apparatus of Landrus includes an independent plunger guide (32) protected by a front and back plate (38, 36). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the head apparatus of Byard to include the head assembly of Landrus for the purpose of limiting the drive distance of a plunger to a position dependent upon the thickness of the article receiving the staple (Landrus-abstract).

Allowable Subject Matter

5. Claims 30-32 and 34 are allowable.

Response to Arguments

6. Applicant's arguments filed October 18, 2004 have been fully considered but they are not persuasive. Applicant has first argued that the secondary reference, Landrus, fails to disclose a handle attached to the head of a stapling apparatus, but rather teaches a handle attached to a driving assembly. Examiner agrees with Applicant's statement that the handle of Landrus is attached directly to the solenoid driving assembly (16), however, it is through the handles attachment to the driver assembly (16) that the handle is connected to and offset from the staple head assembly (10).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In this case, although Landrus does not specifically discuss the advantages of having a handle on the stapling apparatus, it is understood that it is well known in the art of stapling and fastening devices to include a handle offset and attached to the stapling head of the stapling or fastening device for the purpose of improving the handling of the device.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the

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date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (703) 605-4211. The examiner can normally be reached on 7:30 am - 6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 305-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks
Examiner
Art Unit 3721



grw

November 1, 2004



SCOTT A. SMITH
PRIMARY EXAMINER